



**Odero v National Land Commission & 4 others (Environment and Land Constitutional
Petition E005 of 2023) [2024] KEELC 1698 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1698 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E005 OF 2023**

CA OCHIENG, J

APRIL 9, 2024

**IN THE MATTER OF ARTICLES 10, 19, 20, 21(1) AND 22(1), 23(1)
AND (3) AND 165(3) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS UNDER ARTICLES 40 AS READ WITH
60 (1) (B), 62 (1) (C), 64 AND 260 AND 47(1) OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SECTION 23 AND 24 OF THE REGISTRATION
OF TITLES ACT (CHAPTER 281 OF THE LAWS OF KENYA) NOW
REPEALED AND TRANSITIONED AS SECTIONS 24, 25 AND 26 OF
THE LAND REGISTRATION ACT (NO. 3 OF 2012)**

AND

**IN THE MATTER OF THE PHYSICAL PLANNING ACT (CHAPTER 286
OF THE LAWS OF KENYA) NOW REPEALED AND TRANSITIONED AS
THE PHYSICAL AND LAND USE PLANNING ACT (NO. 13 OF 2019
LAWS OF KENYA)**

AND

**IN THE MATTER OF THE UNCONSTITUTIONAL AND ILLEGAL
ALLOTMENT OF TITLE L.R. NO. 1504/11 (IR NO. 41771)**

BETWEEN



BETWEEN

JOSEPH ODERO PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

DIRECTOR OF SURVEY 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

DIESEL CARE LIMITED 5TH RESPONDENT

RULING

1. What is before Court for determination is the Petitioner’s Notice of Motion application dated the 17th August, 2023 where he seeks the following Orders:
 1. Spent
 2. Spent
 3. Spent
 4. Spent
 5. Spent
 6. That the directors of Diesel Care Limited, Joseph Karuoro Claudio and Catherine Wangari Karuoro Claudio, Christine Wangeci Wainaina, Anthony Kariuki Claudio, Mary Waitherero Claudio and Joyce Muthoni Karuoro being directors of Lelo Investment Limited and Eliud Chai T/A Chandor Auctioneers be cited for contempt of this Honourable Court following his willful disobedience of the order issued on the 27th July, 2023 in this matter.
 7. An order be issued directed at Diesel Care Limited and its directors Joseph Karuoro Claudio and Catherine Wangari Karuoro Claudio, Christine Wangeci Wainaina, Anthony Kariuki Claudio, Mary Waitherero Claudio and Joyce Muthoni Karuoro being directors of Lelo Investment Limited and Eliud Chai T/A Chandor Auctioneers jointly and severally to restore property LR. 1504/11 to its original state before the demolition and return all machinery carted away of from the property.
 8. That the directors of Diesel Care Limited Joseph Karuoro Claudio and Catherine Wangari Karuoro Claudio, Christine Wangeci Wainaina, Anthony Kariuki Claudio, Mary Waitherero Claudio and Joyce Muthoni Karuoro being directors of Lelo Investment Limited and Eliud Chai T/ A Chandor Auctioneers be committed to civil jail for a period of six (6) months or such other period as the Court may determine for contempt of this Honourable Court in willfully disobeying the Orders of Court issued on 27th July, 2023 in this matter.
 9. That the assets of Diesel Care Limited and its Directors Joseph Karuoro Claudio and Catherine Wangari Karuoro Claudio, Christine Wangeci Wainaina, Anthony Kariuki Claudio, Mary



Waitherero Claudio and Joyce Muthoni Karuoro being directors of Lelo Investment Limited and Eliud Chai T/A Chandor Auctioneers be sequestered to purge the contempt.

2. The application is premised on the grounds on the face of it and the supporting affidavit of Eng. Joseph Odero where he deposes that he is the registered proprietor of the LR No. 1504/11 hereinafter referred to as the 'suit land'. He explains how the Contemnors filed applications vide ELC Case No. 166 of 2011: Diesel Care Limited v Megvel Cartons Limited and Machakos CMC Misc. Appl. No. E037 of 2023 seeking eviction orders. Further, that the court issued orders of eviction in Machakos CMC Misc. Appl. No. E037 of 2023. He contends that the eviction orders expressly stated that there should be no destruction of property but the 1st Contemnor invaded the said property with goons including bulldozers, demolished part of the buildings, burnt down the go down and looted property worth over three (3) billion shillings. He insists that the destruction of the property was done contrary to the status quo orders issued on 27th June, 2023 and 27th July, 2023 respectively. Further, the 1st Contemnor and its directors were well aware of the said status quo orders. He contends that the 1st Contemnor through its appointed auctioneers, messrs Chador Auctioneers, proceeded to the suit land on 11th August, 2023 whereby they damaged Megvel Cartons Limited's property, factory, machinery as well as his property. He reiterates that the 1st Contemnor obliterated the status quo order issued on 27th July, 2023.
3. The 5th Respondent opposed the instant application by filing a replying affidavit sworn by Joseph Karuoro Claudio, its Managing Director where he deposes that the instant application is false and deliberately intended to mislead this Honourable Court. Further, that in prayers (f) and (g) of the Petition, the deponent confirms that he is not the lawful proprietor of the suit land. He contends that the ownership of L.R. No. 1504/11 (I.R. 85400) by Diesel Care Limited situated in Mavoko has been conclusively determined in Machakos ELC Case No. 166 of 2011: Diesel Care Limited -Vs- Megvel Cartons Limited & 2 Others, and affirmed by the Court of Appeal in Nairobi Civil Appeal No. 70 of 2018: Megvel Cartons Limited -Vs- Diesel Care Limited & 2 Others and Supreme Court Petition of Appeal No. E003 of 2023: Megvel Cartons Limited -Vs- Diesel Care Limited & 2 Others. He argues that the status quo obtaining as at the time, this Honourable Court issued the Order on 24th July 2023 was that the 5th Respondent was in the process of satisfying the Decree in Machakos ELC Case No. 166 of 2011: Diesel Care Limited -Vs- Megvel Cartons Limited & 2 Others. He insists that the Order for status quo did not specifically stay and or serve as an Order staying the execution of the lawful Decree in Machakos ELC Case No. 166 of 2011 which was executed against Megvel Cartons Limited. He reiterates that the 5th Respondent in satisfaction of the Decree in Machakos ELC Case No. 166 of 2011 evicted Megvel Cartons Limited from the suit land. He avers that the Petitioner/Applicant has deliberately perjured himself by alleging that he was also in occupation of the property in an attempt to mislead this Honourable Court. Further, that the Director of Megvel Cartons Limited, Prasul Jayantilal Shah, swore an affidavit on 14th August 2023 in Machakos Chief Magistrate's Court Miscellaneous Application Number E037 of 2023 wherein he confirms that indeed Megvel Cartons Limited was in possession of the suit land when the Decree in Machakos ELC Case No. 166 of 2011 was satisfied. Further, after the satisfaction of the Decree in Machakos ELC Case No. 166 of 2011, the directors of Megvel Cartons Limited sent thugs and goons to the 5th Respondent's property herein to cause mayhem, destruction including malicious damage and he reported the same to the local Police Station. Further, some of the thugs and goons who include Megvel Cartons Limited's employees were arrested and have been charged in Court. He denies that at no time did the 5th Respondent disobey and or undermine the authority of this Honourable Court as alleged by the Petitioner. He reiterates that for a party to be found to be in civil disobedience of the authority of the Court, it must be established that the Order alleged to have been breached stated clearly and unequivocally what should and should not be done. Further, when the Order for status quo in this Petition was issued, there was a lawful Decree in Machakos ELC Case No. 166 of 2011, which was the existing state of affairs as no stay of execution



was issued against the said Decree. He reiterates that the Order for status quo did not therefore, serve as an Order staying the execution of the Decree in Machakos ELC Case No. 166 of 2011.

4. The Petitioner/Applicant filed a further affidavit reiterating his averments and insisting that when the status quo order was issued on 27th June, 2023, in as much as judgement had been issued in Machakos ELC Case No. 166 of 2011, execution had not commenced. Further, that the obtaining status quo was that he was on the suit land. He claims the status quo of 27th June, 2023 was for maintenance of the status on the ground and that the Court did not allow execution against Megvel Cartons Limited. He insists that as a result of execution, his property was destroyed and any action to the contrary, as to status quo as at time of issuance of the order, amounts to disobedience and undermines authority of the court. He reiterates that the Contemnors are using falsehood. Further, that the 2nd Contemnor on instructions of the 1st Contemnor misled the court in the aforementioned Miscellaneous Cause to issue eviction orders. He further reiterates that Status Quo unequivocally spoke of preservation of the suit land. Further, the language used in the Status Quo order was unambiguous.
5. The application was canvassed by way of written submissions.

Analysis and Determination

6. Upon consideration of the instant Notice of Motion application including the respective affidavits, annexures and rivalling submissions, the only issue for determination is whether the 5th Respondent including its aforementioned directors as well as 2nd Contemnor should be cited for Contempt of Court orders issued on 27th June, 2023 as well as 24th July, 2023 respectively.
7. Black's Law Dictionary (Ninth Edition) defines Contempt of Court as follows:- "Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment."
8. In Halsbury's laws of England at para 463 Vol 9(1) (Re-issue) 3, it was stated as follows:- ".....and a person not a party against whom any judgement or order may be enforced is liable to the same process for enforcing obedience to it as if he were a party".
9. While section 29 of the *Environment and Land Court Act* stipulates that:

'Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both'
10. In the case of North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi (2016) eKLR Justice Mativo (as he then was) stated that: 'writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand have authoritatively stated as follows:-

'there are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases - (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant; (b) the defendant had knowledge of or proper notice of the terms of the order; (c) the defendant has acted in breach of the terms of the order; and (d) the defendant's conduct was deliberate.'
11. See also the case of Bia Tosha Distributors Limited v Kenya Breweries Limited & 6 Others (Petition 15 of 2020) (2023) KESC 14 (KLR) Constitutional and Judicial Review) (17 February, 2023) (Judgement).



12. In this instance, the Petitioner claims to be the owner of the suit land and was in possession thereof. Further, that the 5th Respondent instructed an auctioneer (2nd Contemnor) to undertake execution proceedings on the suit land which culminated in the destruction and loss of property of his property including that of Megvel Cartons Limited. I note as per the Petition, the Petitioner admitted in several paragraphs that he is not the owner of the suit land and even explained the proceedings in ELC 166 of 2011 and Nairobi Civil Appeal No. 70 of 2018 including decisions therefrom. Further, it emerged that the dispute in respect to the ownership of L.R. No. 1504/11 (I.R. 85400) by Diesel Care Limited situated in Mavoko has been conclusively heard and determined in Machakos ELC Case No. 166 of 2011: Diesel Care Limited -Vs- Megvel Cartons Limited & 2 Others, which decision was upheld by the Court of Appeal in Nairobi Civil Appeal No. 70 of 2018: Megvel Cartons Limited -Vs- Diesel Care Limited & 2 Others as well as Supreme Court in Petition of Appeal No. E003 of 2023: Megvel Cartons Limited -Vs- Diesel Care Limited & 2 Others.
13. During the pendency of execution of the Decree emanating from the impugned judgement in Machakos ELC Case No. 166 of 2011: Diesel Care Limited -Vs- Megvel Cartons Limited & 2 Others, the Petitioner herein proceeded to file the instant Petition on 29th May, 2023 contemporaneously with an application seeking conservatory orders. This Court declined to grant conservatory orders and directed that the obtaining status quo be maintained. I note the status quo obtaining at that time, was that it was Megvel Cartons Limited which was on the suit land, while there was a Decree declaring its title invalid hence it was supposed to vacate the said suit land. During that period the 5th Respondent proceeded to instruct an Auctioneer who proceeded to execute the Decree emanating from Machakos ELC Case No. 166 of 2011: Diesel Care Limited -Vs- Megvel Cartons Limited & 2 Others. The Petitioner insists that the status quo order was issued to preserve the status on the ground and hence the 5th Respondent was in contempt of the Order of the Court. It has emerged that in the Machakos CMC Misc. Application No. E037 of 2023, one Prasul Jayantil Shah from Megvel Cartons Limited, in his affidavit dated 14th August, 2023, indeed admitted that it was the said company on the suit land.
14. It is my considered view that since at the time the order of status quo was issued, the courts had already determined the ownership of the suit land which fact the Petitioner admits in his Petition. I opine that in granting the Status Quo Order, the Court never stayed execution of the Decree in Machakos ELC 166 of 2011. Further, the Petitioner sought status quo orders knowing fully well the dispute revolving around suit land had already been determined and he was not on the suit land.
15. In associating myself with the decisions cited above, I am of the view that the Petitioner does not locus to seek contempt proceedings against the 5th Respondent, that has been declared the owner of the suit land. Further, since the 5th Respondent was simply executing a Decree that was in place at the time the status quo order was issued, I find that together with the 2nd Contemnor, they were not in contempt of court orders as claimed.
16. It is against the foregoing that I find the Petitioner's Notice of Motion application dated the 17th August, 2023 unmerited and will disallow it.
17. Costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 9TH DAY OF APRIL, 2024.

CHRISTINE OCHIENG

JUDGE



In the presence of:

Bwire for Petitioner/Applicant

Kibira for 5th Respondent

Mwambonu for 3rd and 4th Respondents

Court Assistant – Simon

